

**HIGH COURT FOR THE STATE OF TELANGANA
(Special Original Jurisdiction)**

**THURSDAY ,THE TWENTY SEVENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY**

PRESENT

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD**

WRIT PETITION NO: 450 OF 2020

Between:

D.E.C. Infrastructure and Projects (India) Private Limited, H.No. 2-1-434/1, Street No. 4, Nallakunta, Hyderabad, Telangana State - 500 044 Represented by its Managing Director Sri.Anirudh Gupta S/o. Late Bhagwandas Gupta

...PETITIONER

AND

IFCI Limited, 5-9-13, Taramandal Complex, 8th Floor, Saifabad, Hyderabad, Telangana State - 500 004 Represented by its Authorized Officer

...RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue writ in the nature of Mandamus, declaring the (i) Letter No. IFCI/HRO/VNRIL/2017-727 Dt. 19/12/2019 issued by the Respondent declining to handover the physical possession of the land admeasuring Acres 24-21 Guntas situated at Rajbollaram Village, MedchalMandal, Ranga Reddy District, Telangana State sold by the Respondent under provision of the SARFAESI Act vide Sale Certificate Dt. 25/11/2019 on the ground that the Respondent has sold the property AS IS WHERE IS AND WHATEVER THERE IS BASIS and WITHOUT RECOURSE BASIS (ii) Auction conducted on 17/10/2019 and (iii) consequent Sale Certificate Dt. 25/11/2019 as illegal arbitrary and against the principles of natural justice and also oppose to Article 14 of Constitution of India and also in contravention mandatory SARFAESI Act and Rules made there under and consequently direct the Respondent to refund the entire bid amount/Sale price of Rs. 8,21,00,000/- with interest 24% per annum from the date of deposit of above said amount.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondent bank to deposit the bid amount/Sale price of Rs. 8,21,00,000/- with upto date interest 24% per annum before this Honourable Court and same may be kept in highest interest bearing fixed deposit pending disposal of the Writ Petition

Counsel for the Petitioner: SRI. G. K. DESHPANDE

Counsel for the Respondent: M/S. P V ARUNA KUMARI, REP. BY

SRI. VEDULA SRINIVAS

The Court made the following:

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

WRIT PETITION No.450 of 2020

ORDER (per Hon'ble Sri MSR,J)

The petitioner before this Court, who has participated in the e-auction notification dt.23.09.2019 notified under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act') by the respondent, a public sector bank and has become the highest bidder for purchase of an extent of Ac.24-21 guntas situated at Rajbollaram Village, Medchal Mandal, Ranga Reddy District, Telangana State. The petitioner quoted Rs.8,21,00,000/- and it is not in dispute that the petitioner paid the entire consideration within the prescribed time and a sale certificate was also issued in his favour on 25.11.2019.

2. On 04.12.2019, the petitioner informed the respondent institution that he may be allowed to get the sale certificate registered after physical possession of the property is delivered to him and called upon the respondent institution to properly identify the auctioned property with fixed boundaries as per the relevant revenue records, authentic survey map of boundaries issued by the competent authority and deliver physical possession of the property to the petitioner. Since there was no response to the letter, the petitioner issued another letter dt.19.12.2019.

3. The petitioner contends that on 16.12.2019, the representatives of the respondent institution insisted the petitioner

to take symbolic possession of the said property on the pretext that the respondent institution had put the auction on **"AS IS WHERE IS AND WHATEVER THERE IS BASIS AND WITHOUT RECOURSE BASIS."**

4. Counsel for the petitioner contends that the petitioner purchased the property by paying huge amount of money and if respondent institution is unable to give possession of the property, the petitioner is entitled to refund of Rs.8,21,00,000/- with interest at 24% per annum. Counsel for the petitioner placed reliance on the Judgment of this Court in **Mandava Krishna Chaitanya v. UCO Bank, dated 21.02.2018 in (W.P.No.3908 of 2017).**

5. The petitioner also assails letter dt. 19.12.2019 issued by the respondent-institution reiterating that the respondent-institution had given symbolic possession of the subject property to the petitioner by issuing Sale Certificate dt.25.11.2019; that in the sale certificate, boundaries were clearly mentioned; and that it had no objection for getting the property demarcated by the petitioner through the revenue office, assuring to give full assistance to the petitioner to get the property demarcated at his cost and expense of the petitioner.

6. In the counter affidavit filed by the respondent-institution, the respondent institution reiterated that the property was sold to the petitioner on **"AS IS WHERE IS AND WHATEVER THERE IS BASIS AND WITHOUT RECOURSE BASIS"**; and denied the contents of letter dt.19.12.2019 issued to the petitioner. It is contended that the respondent-institution did not refuse to deliver physical possession of the property and it has no objection to

register Sale Certificate issued to the petitioner. It is asserted that the petitioner was already handed over the certified copies of title deeds of the subject property wherein the boundaries of the property are clearly mentioned. It is also stated that after filing of the writ petition, a letter dt.04.02.2020 was issued to the petitioner by the respondent institution stating that it had moved an application before the Tahsildar, Medchal, seeking appointment of Mandal Surveyor for demarcation of the property sold to the petitioner; that the respondent institution had paid requisite costs for such survey; that it would assist the petitioner in completion of the sale process, but it is contended that there is no response from the petitioner to the letter dt 04.02.2020.

7. From the facts narrated above, it is clear that though the petitioner has purchased the subject property in the auction held by the respondent institution on 17.10.2019 and had paid the entire sale consideration of Rs.8,21,00,000/- by 02.11.2019, till date almost four months thereafter, possession of the property has not been given to the petitioner. It is not denied by counsel for the respondent institution that under Section 55 (1) (f) of the Transfer of Property Act, 1882, on a sale of property, the seller is bound to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits. Since the property in question is immovable property, it is capable of being physically and not symbolically delivered possession to the petitioner through a panchanama.

8. Obviously, the respondent institution had not taken physical possession of the subject property before it put the property to

sale. For whatever reason, the petitioner having obtained sale certificate is denied the physical possession by the respondent.

9. The plea of the respondent institution that the petitioner has purchased the property on **"AS IS WHERE IS AND WHATEVER THERE IS BASIS AND WITHOUT RECOURSE BASIS"** cannot be countenanced, having regard to the decision of this Court in **Mandava Krishna Chaitanya's case** referred to supra.

10. In the said Judgment, this Court has held that a Secured Creditor, as per scheme of the SARFAESI Act and the Rules framed thereunder, owes a duty to protect the interest of the borrower by realising the best possible price while selling his mortgaged properties; and also owes a duty to the auction purchaser to verify the encumbrances that are attached to the mortgaged property proposed to be sold, so as to inform all intending bidders of the same. This Court referred Clauses (a) and (f) in the proviso to Rule 8 (6) of the Rules of 2002, which cast a duty on the secured creditor to undertake due diligence at least at the stage of putting the secured asset to sale, if not at the time of taking the said property as security while granting loans, so that the bidders in the auction can rest assured that the bank has taken necessary measures in this regard and proceed to participate in the auction sale. The Bench held that ignorance of the secured creditor as to the encumbrances on the property sold by it is no longer an acceptable argument in the light of the decisions of various Courts rejecting the plea that a sale on "as is where is basis" constitutes a shield of protection. It held that in the current commercial milieu, the principle of 'caveat emptor' is outdated and that the applicable

principle is 'caveat venditor'. It clarified that the provisions of Transfer of Property Act, 1882, require the seller to own upto certain duties and it is not open to a responsible bank to take an innocent auction purchaser for a ride by selling to him a tainted property and thereafter claim protection under the principle of "buyer beware". It also deprecated the practice of the respondent bank in the said case in affecting the sale of the immovable property without first securing actual physical possession thereof. It set aside the said auction sale held by the bank and directed refund of the sale consideration with interest @ 18% per annum.

11. We respectfully follow the said decision and reject the plea of the respondent-institution that the sale in favour of the petitioner was subject to condition of **"AS IS WHERE IS AND WHATEVER THERE IS BASIS AND WITHOUT RECOURSE BASIS"**, that the petitioner cannot complain, and should pursue with revenue authorities and secure physical possession of the property.

12. In our considered opinion, the respondent-institution cannot deny its responsibility to take physical possession of the property, if not under Section 13 (4) of the Act, at least by invoking Section 14 of the Act, after taking assistance of the Chief Metropolitan Magistrate or District Magistrate, when it is empowered to do so under the provisions of the Act. It cannot force the innocent auction purchasers like petitioner to take steps to get possession of property, which they have purchased from after the respondent coolly pockets the amount paid by auction purchaser. It cannot compel the petitioner to continue with sale transaction in light of its conduct in not fulfilling its obligation to deliver the physical

possession of the property though almost four months have elapsed since receipt of full sale consideration by the respondent institution from the petitioner.

13. Accordingly, the Writ Petition is allowed with costs of Rs.10,000/-; letter dt.19.12.2019 as well as sale certificate, dt. 25.11.2019 issued by the respondent institution are set aside; the respondent institution shall refund to the petitioner the sale amount of Rs.8,21,00,000/- paid by the petitioner to it with interest @ 18% per annum from the date of said payment by petitioner till re-payment by the respondent subject to the petitioner returning original title deeds of the subject property to the respondent, within a period of two weeks from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

//TRUE COPY//

Sd/- T SRINIVAS
ASSISTANT REGISTRAR


SECTION OFFICER

To,

1. The Authorized Officer, IFCI Limited, 5-9-13, Taramandal Complex, 8th Floor, Saifabad, Hyderabad, Telangana State - 500 004.
2. One CC to Sri. G.K. Deshpande, Advocate (OPUC)
3. One CC to Sri. VedulaSrinivas, Advocate (OPUC)
4. Two CD Copies.

PM


HIGH COURT

MSR,J

&

TA,J

DATED:27/02/2020

ORDER

WP.No.450 of 2020



Allowing the WP
With0 costs.

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24/04/2020